

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

ELECTRONICALLY
FILED
01/10/2019
U.S. DISTRICT COURT
Northern District of WV

SANDY MAURO,)	CIVIL ACTION NO. <u>1:19-CV-6</u>
)	
Plaintiff,)	JUDGE <u>Kleeh</u>
)	
v.)	(removed from the Circuit Court of Harrison
)	County, Civil Action No. 18-C-307-2)
INFOCISION, INC.,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, InfoCision, Inc. ("InfoCision"), by and through undersigned counsel, hereby respectfully submits to this Court this Notice of Removal ("Notice"), from the Circuit Court of Harrison County, West Virginia. InfoCision states as follows in support of this Notice:

1. On or about December 7, 2018, Plaintiff, Sandy Mauro ("Plaintiff"), filed a Complaint in the Circuit Court of Harrison County, West Virginia, which was styled *Sandy Mauro v. InfoCision, Inc.*, Civil Case No. 18-C-307-2 ("the State Court Action").
2. The Secretary of State for the State of West Virginia accepted service on behalf of InfoCision as statutory attorney-in-fact on December 11, 2018. Attached as **EXHIBIT A** is a copy of the correspondence InfoCision received on December 17, 2018 from the Secretary of State for the State of West Virginia regarding service.
3. Attached as **EXHIBIT B** to this Notice is a certified true and correct copy of Plaintiff's Complaint and all process, pleadings, and orders filed or issued in the State Court

Action. Attached as **EXHIBIT C** to this Notice is a certified true and correct copy of the State Court Action docket sheet.

4. This Notice is timely filed with this Court within thirty (30) days after service of this action on InfoCision pursuant to 28 U.S.C. § 1446(b).

5. Removal of this action to the United States District Court for the Northern District of West Virginia is proper under 28 U.S.C. § 1441 because it is the federal district court having jurisdiction over the county where the State Court Action is pending, and because this Court has original jurisdiction on diversity grounds pursuant to 28 U.S.C. § 1332.

6. Specifically, Plaintiff's Complaint alleges that Plaintiff is a resident of the City of Clarksburg, County of Harrison, West Virginia. (Exhibit B, Complaint at ¶ 1).

7. InfoCision is a corporation organized under the laws of Delaware with its principal place of business located in Ohio. As a result, InfoCision is not a citizen of West Virginia for the purpose of diversity jurisdiction.

8. The substantive allegations of Plaintiff's Complaint can fairly be read to demonstrate that the amount in controversy exceeds \$75,000, exclusive of interest and costs, based on Plaintiff's wages and other compensation while employed by InfoCision, the claims she has asserted, and the types of damages that she has requested. See, e.g., Asbury-Castro v. GlaxoSmithKline, Inc., 352 F. Supp. 2d 729, 731-32 (N.D. W. Va. 2005) ("When the amount in controversy is not apparent on the face of the plaintiff's complaint, the federal court must attempt to ascertain the amount in controversy by considering the plaintiff's cause of action as alleged in the complaint and any amendments thereto, the notice of removal filed with a federal court, and other relevant materials in the record... punitive damages [can] augment

compensatory damages in determining the amount in controversy unless it can be said to a legal certainty that plaintiff cannot recover punitive damages in the action.”).

9. Specifically, Plaintiff’s Complaint alleges that: “[a]s a direct and proximate result of the wrongful acts and/or omissions of [InfoCision], Plaintiff Mauro was caused to suffer injuries, damages, and losses, including but not limited to: past lost wages or back pay, future lost wages or front pay, past and future lost benefits, embarrassment, anxiety, fear, emotional distress, severe financial hardship, and attorney fees.” (Exhibit B, Complaint at ¶ 20). In addition, Plaintiff’s Complaint requests “judgment against [InfoCision], in an amount that would adequately compensate Plaintiff Mauro for the unlawful acts and/or omissions and violations of law by [InfoCision], plus whatever other relief the Court or Jury would deem just; and for *punitive damages in an amount adequate to punish and deter [InfoCision] from committing this type of conduct in the State of West Virginia in the future and in such amounts as will satisfy all other reasons of law and public policy for an award of punitive damages*; and Plaintiff Further [sic] prays for an award of attorney fees, costs, interests, and for such other relief as the Court or jury deems just.” (Exhibit B, Complaint at WHEREFORE paragraph, emphasis added). As a result, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. By reason of the above, InfoCision is entitled to, and hereby does, remove this action to this Court pursuant to 28 U.S.C. § 1441 based on this Court’s original jurisdiction.

11. InfoCision will give written notice to Plaintiff of this removal and will promptly file a copy of this Notice with the Circuit Court of Harrison County, West Virginia, in Case No. 18-C-307-2 as required by 28 U.S.C. § 1446(d). A copy of the Notice to be filed with the Circuit Court of Harrison County, West Virginia, excluding its attachments, is attached hereto as **EXHIBIT D**.

12. InfoCision reserves all rights, including defenses and objections as to venue, personal jurisdiction, and service, and the filing of this Notice of Removal is subject to, and without waiver of, any such defenses and objections.

WHEREFORE, InfoCision respectfully gives notice that the State Court Action is hereby removed from the Circuit Court of Harrison County, West Virginia to this Court.

Respectfully submitted,

/s/ Allison S. McClure

Allison S. McClure (WV State Bar # 10785)

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Notice of Removal of Defendant InfoCision, Inc. was filed electronically and served via regular U.S. mail, with a courtesy copy by email, this 10th day of January, 2019 upon the following:

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/s/ Allison S. McClure